

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: January 6, 2015Agenda Item *1

Company: Enbridge Energy, Limited Partnership

Docket No. PL-9/CN-14-916

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Pipeline Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border

- Issue(s):
- Should the Commission approve the notice plan proposal?
 - Should the Commission grant a variance to Minn. R. 7829.2560, subp. 1?
 - Should the Commission grant the requested exemptions from certain data requirements found in Minnesota Rules Chapter 7853?
 - Should the Commission approve and adopt a proposed order authorizing a separate docket for highly sensitive trade secret information and protective orders for trade secret and highly sensitive trade secret information?

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Relevant Documents

Enbridge Energy Certificate of Need Notice Plan ProposalOctober 24, 2014
Department of Commerce Comments on Notice Plan Proposal.....November 13, 2014
Enbridge Energy Reply CommentsNovember 26, 2014
Department of Commerce Response Letter December 4, 2014

Attachments

Project Overview Map from Enbridge Notice Plan Proposal

The attached materials are work papers of the Commission staff. They are intended for use by the Minnesota Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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I. STATEMENT OF THE ISSUES

- Should the Commission approve the notice plan proposal?
- Should the Commission grant a variance to Minn. R. 7829.2560, subp. 1?
- Should the Commission grant the requested exemptions from certain data requirements found in Minnesota Rules Chapter 7853?
- Should the Commission approve and adopt a proposed order authorizing a separate docket for highly sensitive trade secret information and protective orders for trade secret and highly sensitive trade secret information?

II. PROJECT OVERVIEW

On October 24, 2014, Enbridge Energy, Limited Partnership (Enbridge) filed a Petition for Approval of Notice Plan Proposal, Request for Exemptions, Protective Order, and Separate Docket and Accompanying Protective Order for Highly Sensitive Nonpublic Data (Petition) with the Minnesota Public Utilities Commission (Commission) for its Line 3 Pipeline Replacement Project.

Enbridge's existing Line 3 pipeline was originally installed between 1962 and 1967 and is part of the Enbridge Mainline System. The existing Line 3 pipeline originates in Canada and crosses the United States-Canada border near Neche, North Dakota. It continues through North Dakota and Minnesota and terminates at the Enbridge Superior Station and Terminal Facility near Superior, Wisconsin. The Enbridge Mainline System delivers crude oil to: (1) Minnesota Pipe Line Company's interconnecting facilities at Clearbrook for ultimate redelivery to Minnesota refineries, and (2) the Superior Terminal for ultimate delivery to other United States and Canadian refineries.

The Line 3 Pipeline Replacement Project (Project), as described by Enbridge, would entail the replacement of approximately 285 miles of the existing 34-inch diameter Line 3 pipeline with 338 miles of new 36-inch diameter pipeline and associated facilities within Minnesota. The associated facilities include eight pumping stations, valves, metering, monitoring equipment, and related electrical facilities.

The Project would also require the acquisition of 25 to 65 feet of new right-of-way and 45 to 70 feet of temporary right-of-way west of Clearbrook, and 50 feet of new right-of-way and 60 to 85 feet of temporary right-of-way east of Clearbrook.

The Project would not be located in or near the existing Line 3 right-of-way because, as indicated by Enbridge, the existing pipeline is too close to other Enbridge pipelines to be safely excavated.

Rather, the new pipeline would be constructed in a new right-of-way and co-located with Enbridge's proposed Sandpiper Pipeline Project.¹ The existing Line 3 pipeline would be permanently deactivated after the new pipeline is installed, tested, and operational. The planned in-service date for the Project is the second half of 2017.

The new pipeline would generally follow Enbridge's existing Line 3 pipeline route from the North Dakota-Minnesota border in Kittson County to the existing Enbridge Terminal in Clearbrook. From Clearbrook the route would proceed south and follow the proposed Sandpiper Pipeline preferred route, which generally follows the existing Minnesota Pipe Line's right-of-way to Hubbard, Minnesota. From Hubbard the route would proceed east traversing greenfield areas and following portions of existing electric transmission line and railroad rights-of-way before crossing the Minnesota-Wisconsin border approximately five miles east-southeast of Wrenshall, Minnesota. The new pipeline would traverse Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

As stated by Enbridge, the purpose and need of the Project is to address safety and integrity issues associated with the existing Line 3 pipeline. Enbridge indicated that inspection of the existing pipeline under its Integrity Management Program revealed numerous sections of the pipeline that were in need of repair or replacement. Rather than conducting as many as 900 integrity digs, Enbridge determined that the most efficient and least invasive approach to maintaining the existing Line 3 pipeline's integrity is to replace the entire pipeline. Enbridge maintained that complete replacement would ensure the continued safe, reliable transportation of crude oil while minimizing potential impacts to the environment and landowners.

III. PROCEDURAL HISTORY

On October 24, 2014, Enbridge filed a Notice Plan Petition for its proposed Line 3 Pipeline Replacement Project. Initial comments on the Petition were accepted until November 13, 2014, reply comments were accepted until December 3, 2014.

On November 13, 2014, the Minnesota Department of Commerce, Division of Energy Resources (Department) filed Initial Comments on the Petition.

On November 26, 2014, Enbridge filed Reply Comments in response to the Department's comments.

¹ See Commission Dockets: PL-6668/CN-13-473 (Sandpiper Pipeline Certificate of Need Application) and PL-6668/PPL-13-474 (Sandpiper Pipeline Route Permit Application).

On December 4, 2014, the Department filed a Response Letter indicating the supplemental information contained in Enbridge's Reply Comments had satisfactorily addressed its concerns with the notice plan proposal. The Department also provided further recommendations regarding Enbridge's other requests.

IV. STATUTES AND RULES

Under Minn. Stat. § 216B.243, subd. 2, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.

The proposed Project is a large energy facility as defined by Minn. Stat. § 216B.2421, subd. 2(4), because it is a pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of crude petroleum.

Under Minn. R. 7829.2560, an applicant must file a proposed plan for providing notice to all persons reasonably likely to be affected by the proposed pipeline at least 90 days before filing a certificate of need application for a pipeline. The rule also identifies certain requirements for notice plans that include: identifying a comment period on notice plan, identifying notice recipients and methods for distributing notices, required content of notices, and the timing for implementation of the notice plan.

V. NOTICE PLAN PROPOSAL

On October 24, 2014, Enbridge filed as part of its Petition, a certificate of need Notice Plan Proposal for its proposed Line 3 Pipeline Replacement Project. Pursuant to Minn. R. 7829.2560, the filing outlined Enbridge's plan for providing notice to all persons reasonably likely to be affected by the Project. In addition to the Notice Plan Proposal, Enbridge also requested the Commission consider the following:

- A variance to Minn. R. 7829.2560, subp. 1, to allow filing of the certificate of need application to be filed immediately upon completing implementation of the Notice Plan, rather than the 90 days prior to filing a certificate of need application requirement.
- Exemptions from certain certificate of need application data requirements found in Minnesota Rules Chapter 7853.
- Approval of a proposed order authorizing a separate docket for highly sensitive trade secret information and protective orders for trade secret and highly sensitive trade secret information.

VI. INITIAL COMMENTS ON NOTICE PLAN PROPOSAL

On October 24, 2014, Enbridge filed a notice plan proposal for its proposed Line 3 Pipeline Replacement Project. As indicated on page 1 of Enbridge's Notice Plan Proposal, initial comments on the Notice Plan were accepted until November 13, 2014, and reply comments were accepted until December 3, 2014. The Department and Enbridge were the only parties to provide comments on this matter.

A. Department of Commerce Division of Energy Resources

On November 13, 2014, the Department provided initial comments on Enbridge's Petition. The Department's comments provided analysis and recommendations concerning notice plan requirements with respect to Minn. R. 7829.2560. The Department also provided comments regarding Enbridge's requested variance, exemptions from certain certificate of need application data requirements, protective orders, and creation of a separate docket.

1. Notice Plan Requirements

The Department indicated that the Notice Plan Proposal submitted by Enbridge for the Project generally complies with the requirements found under Minn. R. 7829.2560, and recommended Commission approval, pending the submission of additional data as follows:

- Add the Minnesota Commissioner of Agriculture to the list of agency government officials to receive notice provided as Attachment 3a of the Notice Plan Proposal.
- Revise Attachment 3a to correctly reflect the results of the November 4, 2014 federal, state, and local elections.

Additionally, because Enbridge has proposed to co-locate the Project with the proposed Sandpiper Pipeline Project, the Department, in an effort to avoid possible lapses in noticing, recommended that Enbridge be required to submit the following supplemental data in the event a different system configuration is selected and approved in the Sandpiper docket:

- A proposal to supplement the Notice Plan, along with updates to Attachments 1-4a of the original Notice Plan Proposal, within 60 days of the Sandpiper decision; and
- A compliance filing indicating implementation of the supplemental Notice Plan within 90 days of the Sandpiper decision.

2. Variance Request

The Department recommended that the Commission grant Enbridge's requested variance to Minn. R. 7829.2560, subp. 1, that would allow Enbridge to file a certificate of need application immediately after completing notice plan implementation, rather than the 90 days prior to filing the application required by the rule. The Department stated that the variance would comply with the criteria set forth in Minn. R. 7829.3200.

3. Exemption Requests

The Department recommended that the Commission approve full exemption from the requirements of Minn. R. 7853.0250(B) and 7853.0130(A)(3) – Promotional Practices.

The Department recommended that the Commission approve the requested exemptions from certain content requirements of Minn. R. 7853.0510, subp. 1(B); Minn. R. 7853.0510, subp. 1(C); Minn. R. 7853.0520(B); Minn. R. 7853.0530, subp. 3(D); and Minn. R. 7853.0530, subp. 3(E); contingent upon the submission of the following supplemental information:

- Provide the monthly peak information in lieu of the daily peak information required by Minn. R. 7853.0510, subp. 1(B).
- Monthly peak information in lieu of the daily peak information required by Minn. R. 7853.0510, subp. 1(B), along with any other information to support its certificate of need application, including the increase in size of the pipeline to 36 inches.
- Confirmation that it intends to submit the annual quantity information that is required by Minn. R. 7853.0510, subp. 1(B), and Minn. R. 7853.0520(B).
- A comprehensive description of the nature of the data that is contained in the nomination forms it proposes to substitute for the requirement under Minn. R. 7853.0510, subp. 1(C), and Minn. R. 7853.0530, subp. 3(D).
- A copy of its tariff that indicates its common carrier status and lack of contract capacity on Line 3.
- Monthly peak information in lieu of the daily peak information along with any other data Enbridge believes would be helpful, as required by Minn. R. 7853.0520(B)
- A comprehensive description of the nature of data that it proposes to substitute for the requirement under Minn. R. 7853.0530, subp. 3(E).

4. Protective Orders and Order for a Separate Docket for Highly Sensitive Nonpublic Data

The Department recommended that the Commission deny the requests for issuance of the: (1) proposed protective order for trade secret information governing the certificate of need proceeding; (2) proposed order for a separate docket for highly sensitive trade secret information; and (3) proposed protective order for highly sensitive trade secret information, submitted as Exhibits C, D, and E of the Notice Plan Proposal, respectively.

The Department concluded that it may be premature to grant the requests, as there is no certificate of need application to review at this time. Additionally, if the docket is referred to the Office of Administrative Hearings for a contested case proceeding, the administrative law judge assigned to the case will review the certificate of need application, consider the particular information that Enbridge seeks to protect, and will act promptly on its requests. This is similar to the approach that was taken in the Sandpiper Pipeline docket.

5. Service List

Because Enbridge is proposing to co-locate the Line 3 Project with the proposed Sandpiper Project, and many impacted parties may not be aware of or closely following this docket, the Department recommended that the Commission require Enbridge to serve electronic copies of all documents currently filed in eDockets for this Project on the service lists for the Sandpiper, Docket No. PL-6668/CN-13-473, and Line 67 Upgrade, Docket No. PL-9/CN-13-153, prior to considering Enbridge's variance, exemption, and order requests.

VII. REPLY COMMENTS

On November 26, 2014, Enbridge filed comments addressing the recommendations of the Department and provided further clarification to its Notice Plan Proposal as follows:

- Provided revised contact information, mailing information, and clerical corrections as it related to the notice letter templates to Exhibit A of the Notice Plan Proposal², as requested by Commission staff.
- Provided an updated list of government officials that included the revisions to Attachment 3 of the Notice Plan Proposal³, as requested by the Department. Additionally, Enbridge indicated that it would further update the addresses in January 2015, the date newly elected officials take office.

² Enbridge Reply Comments, Revised Attachments 2, 3, and 4.

³ Enbridge Reply Comments, Revised Attachment 3a.

- Identified five locations along the proposed notice area that should be widened to provide notice to landowners who could potentially be affected by the Project.⁴
- Provided the additional information requested by the Department related to the exemption from certain certificate of need application content requirements found under Minn. R. 7853.
- Agreed with the Department's recommendation that the Commission grant a variance to Minn. R. 7829.2560.
- Continued its request that the Commission issue an order authorizing a separate docket and protective orders for trade secret and highly sensitive trade secret information.⁵

Enbridge indicated that it did not agree with the following recommendations of the Department:

- That Enbridge prepare a supplemental notice plan, as it relates to the Sandpiper docket. Enbridge indicated that it is not opposed to supplemental notice. Rather, Enbridge requested that the Commission defer the issue of supplemental notice until the appropriate time in this proceeding.
- That Enbridge file documentation from the Line 3 docket into the Sandpiper and Line 67 dockets.

1. Department of Commerce Division of Energy Resources Response Letter

On December 4, 2014, the Department filed a letter in response to the supplemental data Enbridge provided in its Reply Comments. The Department recommended or continued to recommend that the Commission approve the Notice Plan, subject to the following recommendations:

- Update Revised Attachment 3a of the Reply Comments to correct the discrepancies noted by the Department; or a filing from Enbridge indicating that it has investigated the discrepancies noted by the Department and found Revised Attachment 3a to be correct as it currently exists.
- Require a proposal to supplement the Notice Plan within 60 days of the Sandpiper decision as follows:

⁴ Enbridge Reply Comments, Revised Attachment 1b.

⁵ Notice Plan Petition (Exhibits C and D) and Reply Comments (Revised Exhibit E).

- A proposal to supplement the Notice Plan; along with updates to Attachments 1-4a of the original Notice Plan Proposal, within 60 days of the Sandpiper decision; and
- a compliance filing indicating implementation of the supplemental Notice Plan, within 90 days of the Sandpiper decision.

The Department continued to recommended that the Commission grant Enbridge's request for a variance to Minn. R. 7829.2560, subp. 1, to allow filing of the certificate of need application immediately upon completing implementation of the Notice Plan.

The Department recommended that the Commission grant Enbridge's requests to submit alternative data to satisfy the certificate of need application content requirements under Minn. R. 7853.0510, subp. 1(B); Minn. R. 7853.0510, subp. 1(C); Minn. R. 7853.0520(B); Minn. R. 7853.0530, subp. 3(D); and Minn. R. 7853.0530, subp. 3(E), and its requests for exemption from the requirements of Minn. R. 7853.0250(B) and Minn. R. 7853.0130(A)(3). The Department concluded that the supplemental information provided by Enbridge in its Reply Comments was acceptable.

The Department stated that it is no longer opposed to Enbridge's requests for a separate docket for highly sensitive trade secret information and protective orders for trade secret and highly sensitive trade secret information, subject to the edits provided in the Department Response Letter.

VIII. STAFF DISCUSSION

Staff has reviewed the Petition, the Department's Initial Comments, Enbridge's Reply Comments, and the Department's Response Letter. Staff agrees with the recommendations of the Department as outlined in its Reply Comments and Response Letter, with the exception of the recommendation to provide additional filings to certain active pipeline dockets.

Staff understands the Department's positive intent in recommending notice of the proposed Project to other active pipeline project dockets to ensure public recognition of the impending filing. However, staff believes filing individual docket specific data between three open dockets may result in overly complicated individual records. Instead, staff recommends that the Commission require Enbridge to include as part of its Notice Plan Petition the requirement that the notice(s) also be served to the appropriate active service lists associated with the Sandpiper and Line 67 dockets. This would ensure that the citizens interested in the other proposed pipeline projects will also receive notice of the Line 3 Project.

In addition, staff notes that, with regard to the proposed order for a separate docket for highly sensitive trade secret information and protective orders for trade secret and highly sensitive trade secret information, the Commission has the option of adopting and authorizing the orders at this time. Alternatively, the Commission could refer the decision on the orders to the Office of Administrative Hearings and authorize the administrative law judge to consider the orders after the application has been officially filed and deemed substantially complete. This is the approach that was taken in the Sandpiper Pipeline dockets. Staff does not believe this option would have a negative impact on the review timelines.

COMMISSION DECISION ALTERNATIVES

A. Notice Plan Proposal

1. Approve the Enbridge Notice Plan Proposal as originally filed.
2. Approve the Notice Plan Proposal subject to the modifications recommended by the Department in its Reply Comments and Response Letter.
3. Approve the Notice Plan Proposal subject to the modifications recommended by the Department in its Reply Comments and Response Letter, further modified by the recommendation of Commission staff regarding additional noticing to certain active pipeline dockets.
4. Reject the Notice Plan Proposal and indicate the deficiencies that need to be corrected.
5. Take some other action deemed appropriate.

B. Variance Request

1. Approve the requested variance to Minn. R. 7829.2560, subp. 1, to allow filing of the certificate of need application immediately upon completing implementation of the Notice Plan.
2. Reject the requested variance to Minn. R. 7829.2560, subp. 1.
3. Take some other action deemed appropriate.

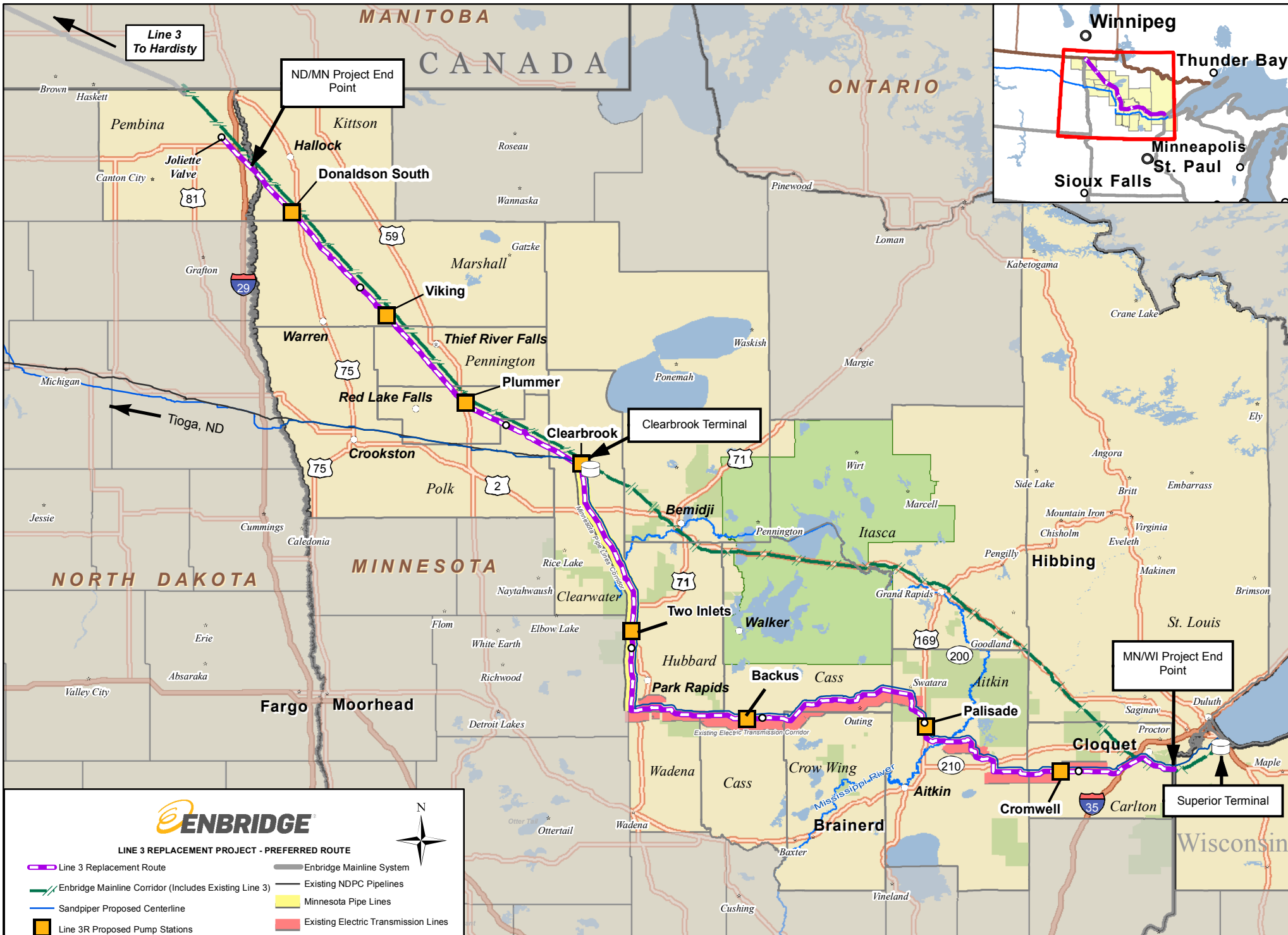
C. Exemption Requests

1. Approve the exemptions to the certificate of need content rules as requested by Enbridge in its original Notice Plan Petition.
2. Approve the exemptions to the certificate of need content rules as requested by Enbridge in its original Notice Plan Petition, as supplemented by the Reply Comments of Enbridge.
3. Reject the requested exemptions to the certificate of need content rules.
4. Take some other action deemed appropriate.

D. Orders for Protection and Separate Docket

1. Approve and adopt the proposed order authorizing a separate docket for highly sensitive trade secret information and protective orders for trade secret and highly sensitive trade secret information, as provided by Enbridge in its Notice Plan Petition (Exhibits C and D) and Reply Comments (Revised Exhibit E).
2. Approve and adopt the proposed orders as modified by the Department in its Response Letter.
3. Do not approve and adopt the proposed orders. Instead, allow the administrative law judge to consider the orders after the application has been filed, deemed substantially complete, and referred to the Office of Administrative Hearings for contested case proceedings, if decided.
4. Take some other action deemed appropriate.

Staff Recommendation: A3, B1, C2, D3



Line 3 To Hardisty

ND/MN Project End Point

Clearbrook Terminal

MN/WI Project End Point

Superior Terminal



LINE 3 REPLACEMENT PROJECT - PREFERRED ROUTE

- Line 3 Replacement Route
- Enbridge Mainline Corridor (Includes Existing Line 3)
- Sandpiper Proposed Centerline
- Line 3R Proposed Pump Stations
- Enbridge Mainline System
- Existing NDPC Pipelines
- Minnesota Pipe Lines
- Existing Electric Transmission Lines
- Enbridge Terminals

Line 3 Centerline Rev H East: 9/26/2014
 Line 3 Centerline Rev A West: 10/13/2014

Author: CMW
 Date: 10/23/2014

Additional detailed project maps can be found on the project website at www.enbridge.com/Line3ReplacementProgram or by calling the Line 3 Replacement Project team at 855-788-7812.